

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of the  
Sales and Use Tax Permit of NOLA, Inc.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came before Administrative Law Judge M. Kevin Snell for an evidentiary hearing on November 28, 2012. The hearing record closed at the conclusion of the hearing on November 28, 2012.

Joan Tujetsch, Attorney, Legal Services Division, appeared on behalf of the Minnesota Department of Revenue (Department). Kelly Dorsey, owner, appeared on behalf of NOLA, Inc. (Respondent or NOLA).

**STATEMENT OF ISSUE**

The issue in this case is whether or not the Respondent has failed to pay sales taxes owed to the Department as required by law, thereby authorizing the revocation of the Respondent's sales tax permit.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Kelly Dorsey has operated retail businesses in Minneapolis, Minnesota, for over 25 years, including the Respondent from 2006 until December 2011, when Respondent stopped doing business. All of Ms. Dorsey's businesses paid taxes on time until May of 2007, when she began having personal and financial difficulties.<sup>1</sup>

2. Respondent NOLA holds Sales and Use Tax Permit Number 8088492 issued by the Minnesota Department of Revenue.<sup>2</sup> By law it was required to collect and remit sales tax to the State of Minnesota.<sup>3</sup>

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<sup>1</sup> Testimony of Kelly Dorsey; Ex. 13.

<sup>2</sup> Ex. 3.

<sup>3</sup> Test. of Laurie Beno, Department Collection Officer.

3. Respondent has not paid all sales and use tax due to the State of Minnesota. As of the date of the evidentiary hearing, the total amount owed for sales tax, penalty, interest and other charges is \$33,482.02, with penalty and interest continuing to accrue where appropriate.<sup>4</sup>

4. Respondent does not contest the amount of the taxes owed.<sup>5</sup>

5. Ms. Dorsey is 64 years old and is now working part-time at a wage of \$9.00 per hour. She maintains that the only way she can pay the past due taxes is to stay in the retail business, as she cannot acquire a job at her age that will permit her to secure an income adequate to do so.<sup>6</sup>

6. Ms. Dorsey attributes the business failure of Respondent and Respondent's failure to pay sales tax to a number of unfortunate circumstances that began in 2007, including:

- a. The bi-polar diagnosis of her youngest son, requiring that he be hospitalized a number of times and cared for by Ms. Dorsey; and
- b. The hospitalization of her ex-husband due to mental illness, requiring that he be cared for by Ms. Dorsey; and
- c. Loss of the bookkeeper and the business computer, which allowed business records to become "bags" of records which caused the business records to become disorganized; and
- d. The downturn in the local economy.<sup>7</sup>

7. Respondent cooperated with the Department during an audit and responded to the Department's requests for financial information, including bank statements.<sup>8</sup> However, Respondent failed to provide all requested information necessary to approve a payment agreement in 2011.<sup>9</sup>

8. The Department and NOLA entered into payment agreements in 2008 and 2010. However, those agreements were terminated by the Department because NOLA did not abide by the payment terms. The Department declined a proposal made by Respondent in 2011 under which Respondent would have paid \$100 per month

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<sup>4</sup> Exs. 1 and 13; Testimony of L. Beno.

<sup>5</sup> Test. of K. Dorsey.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; Ex. 14.

<sup>8</sup> *Id.*

<sup>9</sup> Exs. 4-12; Test. of L. Beno

because it would have taken too long to pay Respondent's delinquent taxes at that rate and because Respondent was not paying its current sales tax obligations at that time.<sup>10</sup>

9. Respondent continues to request that the Department agree to a payment agreement. It proposes to pay and maintain two months of sales tax in advance.<sup>11</sup>

10. On January 12, 2012, the Department sent Respondent a notice of intent to revoke its sales tax permit, detailing the periods and amounts of sales tax due.<sup>12</sup>

11. Respondent requested a hearing in a timely manner and the Department issued a Notice and Order for Hearing on July 27, 2012.<sup>13</sup> After a number of continuances, the hearing was set for and held on November 28, 2012.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50, 270C.02 and 270C.722.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. The Respondent has failed to pay sales taxes as required by Minn. Stat. § 289A.20.

4. As a result of the failure to pay sales taxes owed to the Department, including penalties, interest and other charges, reasonable cause exists to revoke the Respondent's sales tax permit under Minn. Stat. § 270C.722.

5. Minn. Stat. § 270C.722, subd. 2, addresses the issuance of new permits after revocation of prior permits. That statute provides in relevant part:

(a) The commissioner shall not issue a new permit after revocation or reinstate a revoked permit unless the taxpayer applies for a permit and **provides reasonable evidence of intention to comply with the sales and use tax laws and rules. The commissioner may require the**

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<sup>10</sup> *Id.*; Ex. 3.

<sup>11</sup> Ex. 15; Test. of K. Dorsey.

<sup>12</sup> Ex. 1.

<sup>13</sup> Notice and Order for Hearing.

**applicant to provide security**, in addition to that authorized by section 297A.92, **in an amount reasonably necessary to ensure compliance with the sales and use tax laws and rules**. If the commissioner issues or reinstates a permit not in conformance with the requirements of this subdivision or applicable rules, the commissioner may cancel the permit upon notice to the permit holder. The notice must be served by first class and certified mail at the permit holder's last known address. The cancellation shall be effective immediately, subject to the right of the permit holder to show that the permit was issued in conformance with the requirements of this subdivision and applicable rules. Upon such showing, the permit must be reissued.

(b) If a taxpayer has had a permit or permits revoked three times in a five-year period the commissioner may refuse to issue a new permit or reinstate the revoked permit until 24 months have elapsed after revocation and the taxpayer has satisfied the conditions for reinstatement of a revoked permit or issuance of a new permit imposed by this section and rules adopted under this section.

(Emphasis added.)

6. Based upon the foregoing Conclusions, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of Revenue revoke Sales and Use Tax Permit Number 8088492 now held by NOLA, Inc.

Dated: December 27, 2012

s/M. Kevin Snell  
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M. KEVIN SNELL  
Administrative Law Judge

Reported: Digitally Recorded

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the

parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Myron Frans, Commissioner, Minnesota Department of Revenue, 600 North Robert St., St. Paul, MN 55146 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

Minn. Stat. § 270C.722 authorizes the Commissioner of Revenue to revoke a sales tax permit when a taxpayer has failed to pay sales taxes required by law. Because NOLA concedes that the sales tax is due and owing, the Commissioner is authorized to revoke the permit.

The Commissioner is not required to enter into a payment agreement. Under Minn. Stat. § 270C.52, subd. 2, he is given discretion to do so and may accept collateral to ensure payment of tax liability.

Although the result in this proceeding is unfortunate for Ms. Dorsey, she may apply for a new permit for a new business in the future, provided she shows a meaningful intention to abide by the sales tax laws and rules and “provide[s] security . . . in an amount reasonably necessary to ensure compliance with the sales and use tax laws and rules.”<sup>14</sup>

**M. K. S.**

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<sup>14</sup> Conclusion 5.